

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

VIA ECF

The Honorable Ona T. Wang
United States Magistrate Judge for the
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *JPMorgan Chase Bank, N.A., London Branch v. Tesla, Inc.*,
No. 1:21-cv-09441-PGG-OTW (S.D.N.Y.)

Dear Judge Wang,

We write on behalf of Defendant Tesla, Inc. (“Tesla”) to provide a status update pursuant to the Court’s orders entered on August 7, 2023 (ECF 100) (the “August 7 Order”) and July 19, 2023 (ECF 96) (the “July 19 Order”).

1. Discovery from Tesla

The parties have no unresolved disputes regarding discovery from Tesla. As Tesla advised the Court on July 19, discussions regarding JPMorgan’s requests “have gone very cordially, and very speedily.” Status Conf. Tr., ECF 101, at 37:18–38:4 (July 19, 2023) (N. Goralnik). Tesla has since agreed to JPMorgan’s proposal to collect additional responsive text messages from certain custodians. Third-party SpaceX timely completed its document production on August 16. Because of Tesla’s cooperation with JPMorgan’s requests for additional discovery, the parties have had no ripe disputes concerning discovery from Tesla since the pre-motion conference in February.

2. Discovery from JPMorgan

Pursuant to the July 19 Order, the parties advised the Court on August 4 that they were having “productive” discussions and “look forward to completing document discovery without briefing any further discovery disputes.” Joint Letter, ECF 98, at 2 (Aug. 4, 2023). The parties proposed that for “any open issues,” “the requesting party shall submit its opening letter by August 24, 2023,” and that “[i]f the parties are able to resolve all remaining issues, the parties will submit a status update by August 24, 2023 informing the Court of their resolution.” *Id.*

After the Court memo-endorsed the proposed briefing schedule on August 7, Tesla attempted to meet and confer with JPMorgan on August 10. JPMorgan promised to “revert with

quinn emanuel urquhart & sullivan, llp

ABU DHABI | ATLANTA | AUSTIN | BEIJING | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON |
LONDON | LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY |
SAN FRANCISCO | SEATTLE | SHANGHAI | SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | ZURICH

proposed times” for a meet-and-confer but did not do so for several days. When the parties finally conferred on August 22, Tesla confirmed its agreement to JPMorgan’s requests, but JPMorgan was not yet prepared to provide a substantive update regarding Tesla’s requests. Tesla is awaiting forthcoming responses to correspondence that Tesla sent to JPMorgan since the August 7 Order was entered, including regarding JPMorgan’s audio recordings, centralized files, and privilege log.

a. Audio Recordings

On August 3, JPMorgan advised Tesla that, despite its stated objections based on burden, JPMorgan was retrieving, listening to, and transcribing potentially relevant recordings of telephone conversations by its traders and trading managers. JPMorgan acknowledged that it possesses metadata that can be used to identify these phone calls and their recordings. On August 23, JPMorgan stated that the parties are *not* at an impasse regarding discovery of its audio recordings. “With respect to audio recordings,” JPMorgan stated, “we are still working through these and discussing with our client....” JPMorgan suggested that “it will be more productive to discuss when we have more information to share....”

JPMorgan has not yet agreed to Tesla’s request to share details regarding the metadata in its possession and has not provided other requested details regarding the results of JPMorgan’s investigation and review of its audio recordings. Because JPMorgan is actively reviewing its audio recordings, Tesla does not believe that JPMorgan’s assertion of burden is well-founded. Tesla is concerned that JPMorgan may be withholding information in its possession while it makes a strategic decision about whether to produce the audio recordings it is reviewing. Tesla looks forward to receiving the additional information that JPMorgan has indicated it may share.

b. Centralized Files

JPMorgan has indicated that the parties may have a ripe dispute regarding discovery from JPMorgan’s electronic folders. However, JPMorgan has not yet provided Tesla with sufficient information to evaluate JPMorgan’s position, such as which folders JPMorgan is refusing to search, and why JPMorgan objects to searching them. On August 23, JPMorgan advised Tesla by email that “[w]e will follow up in writing on [Tesla’s] letter regarding centralized files, but we do not intend to produce any additional materials in response, other than the Market Risk and VCG [Valuation Control Group] documents we’ve already agreed to produce.”

JPMorgan expressly agreed to collect documents from centralized files on November 11, 2022. On January 9, 2023, Tesla identified highly material gaps in JPMorgan’s production. For example, JPMorgan had not collected or produced its most detailed analyses of the potential impact of Tesla’s going-private on the warrants. JPMorgan produced one of the missing documents (from its Market Risk group) on April 14 and six others (from its Valuation Control Group) around midnight on July 19. On August 1, JPMorgan agreed to produce other documents saved in the same folder paths as those seven documents. However, JPMorgan has not completed those productions and has refused to search other potentially relevant folders.

At least two aspects of JPMorgan’s conduct may present a ripe dispute for the Court’s attention:

First, JPMorgan has not disclosed which centralized folders it is refusing to search and has revealed information regarding uncollected folders *only after* deciding to search them. For example, JPMorgan disclosed for the first time on August 1, 2023 that there is a copy of “VCG’s Tesla sharepoint folder” containing responsive data that JPMorgan now intends to produce. As a result of JPMorgan’s sparing approach to these disclosures, JPMorgan is not only refusing to search certain electronic folders – it has refused to confirm or deny the existence of folders that Tesla has urged JPMorgan to search. *See, e.g.*, Joint Letter, ECF 67, at 4 (Dec. 13, 2022) (noting Tesla’s request for “a *supposed* briefing given to JPM’s board of directors”) (emphasis added). JPMorgan still has not confirmed whether these briefing materials exist and apparently objects to producing them.

Second, JPMorgan has indicated that it believes its obligation to produce documents from centralized files is subject to broad subject-matter exclusions. On August 1, JPMorgan stated that it had “never agreed” to search centralized files for documents regarding topics such as: (i) Elon Musk’s potentially taking Tesla private; (ii) the trading portfolio that contains the warrants; (iii) the Valuation Control Group’s contemporaneous report on the adjustments at issue to JPMorgan’s Valuation Governance Forum; (iv) JPMorgan’s hostile relationship with Tesla and Elon Musk; and (v) other adjustments that may confirm or disconfirm JPMorgan’s assertion that it followed its “standard practice” when it calculated the adjustments at issue.

Tesla awaits JPMorgan’s written follow-up regarding its centralized files and will evaluate which aspects of JPMorgan’s position can be resolved or may require the Court’s intervention.

c. Implied Volatility Data

On July 28, JPMorgan made a production of data that Tesla identified as missing more than six months earlier, including implied volatilities, book values, and profit-and-loss for the warrants. JPMorgan improperly redacted large amounts of data for responsiveness and based on new assertions of confidentiality. In addition, JPMorgan has yet to produce certain data for the thirty trading days before and after the going-private discussions in 2018. Tesla has also notified JPMorgan that its production is missing certain highly relevant risk reports that were sent regularly to JPMorgan’s traders containing information regarding the warrants. Tesla is optimistic that these and other more discrete issues will be resolved through further discussion.

* * *

Based on the foregoing, Tesla looks forward to receiving further information from JPMorgan and to providing a further update to the Court on September 5, 2023, when the parties submit their detailed joint conference agenda pursuant to the July 19 Order.

Respectfully submitted,

Nathan Goralnik